

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

LUCINDA “CINDY” GUTHRIE,

Appellant,

v.

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,

Respondent.

DOCKET NUMBER WD79287
(Consolidated with WD79328)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 25, 2016

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

JUDGES

Division IV: Pfeiffer, C.J., and Howard and Witt, JJ.

CONCURRING.

ATTORNEYS

David J. Moen
Jefferson City, MO

Attorney for Appellant,

Bart A. Matanic
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Attorney for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

LUCINDA "CINDY" GUTHRIE,)	
)	
Appellant,)	
v.)	OPINION FILED:
)	October 25, 2016
MISSOURI DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Respondent.)	

WD79287 (Consolidated with WD79328)

Cole County

Before Division IV Judges: Mark D. Pfeiffer, Chief Judge, and Victor C. Howard and Gary D. Witt, Judges

The Missouri Department of Labor and Industrial Relations ("Department") initiated an appeal in this court of the judgment of the Circuit Court of Cole County, Missouri ("circuit court"), refusing to follow the ruling of the Administrative Hearing Commission ("AHC") that attorney's fees to the prevailing party, Lucinda Guthrie ("Guthrie"), were limited to the section 536.087 prescribed rate of \$75 per hour and, instead, awarding attorney's fees at a rate per hour in excess of the statutorily prescribed rate.

As a threshold matter, when an appeal is taken from a circuit court judgment that reverses the decision of an administrative agency, we review the decision of the *agency* rather than of the *circuit court*, and the party aggrieved by the agency decision has the duty to file the appellant's brief and bears the burden of persuasion before this court. Rule 84.05(e). Although the Department initiated this appeal as the party aggrieved by the *circuit court's* decision, Guthrie was responsible for filing the appellant's brief under Rule 84.05(e) because she was aggrieved by the *AHC's* decision. Guthrie's points on appeal violate Rule 84.04(d)(2), in that they focus upon arguments related to *circuit court* rulings rather than challenged *AHC* rulings. An appellant's failure to substantially comply with Rule 84.04 preserves nothing for our review and is grounds for dismissing the appeal. However, we prefer to resolve an appeal on the merits rather than to dismiss for briefing deficiencies. Because we were able to discern the gist of Guthrie's allegations of error by the AHC and arguments related thereto, we exercised our discretion to review the substance of Guthrie's claims on appeal.

The gist of Guthrie’s first claim is that the AHC erred in awarding attorney’s fees at the statutory rate of \$75 per hour because all of the competent and substantial evidence indicated that this case was unusually complex and that her attorney, Roger Brown, had specialized knowledge and experience justifying a higher rate than \$75 per hour.

In Guthrie’s second point, the gist of her argument is that the AHC erred in awarding attorney’s fees at the statutory rate of \$75 per hour because section 536.085(4) is unconstitutional in that it violates her right to due process. She argues that by limiting compensation to \$75 per hour, there will be no legal representation for wrongfully terminated state employees who cannot afford to hire an attorney at their own expense to exhaust their administrative remedies before pursuing relief in the circuit court.

JUDGMENT OF CIRCUIT COURT REVERSED; AHC’S DECISION REINSTATED.

Division IV holds:

1. “[A]ttorney fees shall not be awarded in excess of seventy-five dollars per hour **unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved,** justifies a higher fee[.]” § 536.085(4). Guthrie presented no evidence suggesting that the “factual complexity” of her case limited the availability of qualified attorneys to handle her case. Moreover, substantial and competent evidence exists in the record supporting the AHC’s conclusion that this was not a case necessitating an attorney with some distinctive knowledge or specialized skill needful for the litigation. Furthermore, evidence that the prevailing hourly rate for competent attorneys is higher than the statutory rate in section 536.085 is insufficient to support the finding of a special factor. Missouri’s legislature controls the statutorily authorized fee in this case, and we may not disregard a statutory provision.

2. There is no constitutional right to attorney’s fees under either the United States Constitution or the Missouri Constitution. Missouri courts follow the American Rule, which requires each litigant to bear the expense of his or her own attorney’s fees unless a statute specifically authorizes recovery or when a contract provides for attorney’s fees. Section 536.087.1 authorizes an agency to award “reasonable fees and expenses” to a party prevailing in an agency proceeding brought by or against the State if it is determined that the position of the State was not substantially justified or that special circumstances make an award unjust. The statutory cap on attorney’s fees does not violate any of Guthrie’s federal or state constitutional rights of due process; rather, the statute *promotes* the exercise of due process rights in the context of a merit system employee.

Opinion by: Mark D. Pfeiffer, Chief Judge

October 25, 2016

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